

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6211 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NURISMAIL ISMAILBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr DP Joshi, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 19/12/97

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner has challenged the order of detention dated 17.7.97 passed by the Commissioner of Police, Ahmedabad under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act of 1985'). It appears from the grounds of detention that

some cases with respect to different offences under Chapter XVII of the Indian Penal Code have been registered against the detenu. Statement of some witnesses have also been recorded, who have spoke about the anti-social activities of the detenu.

2. Provisions of the PASA Act, 1985 are intended to deal with habitual criminals, dangerous and desparate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal laws and the mortal fear of punishment fro crime are not sufficient deterrants for them. Section 3 of the PASA Act, 1985, is therefore, intended to deal with such criminals who cannot readily be apprehended to be booked under the ordinary law and who have special reasons, cannot be convicted under the penal laws in respect of offences alleged to have been perpetrated by them. The power under the PASA Act is required to be exercised with restraint and great caution. The Apex Court in M J Shaikh v. M M Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268 has held that the detaining authority must be satisfied that the detenu is a dangerous person within the meaning of section 2(c) of the PASA Act, 1985, who habitually commits or attempt to commit or abets the commission of any offence punishable under Chapter XVI or XVII of the Indian Penal Code or any of the offences punishable under Chapter V 9of the Arms Act as according to sub-section (4) of Section 3 of the PASA Act, it is such "dangerous person" who for the purpose of section 3 shall be deemed to be a person "acting in any manner prejudicial to the maintenance of public order" against whom an order of detention may lawfully be made. The expression "habit" or "habitually" has not been defined in the Act. It does not refer to the frequency of the occasion but to the invariability of practice and the habit has to be proved by totality of facts. The Apex Court, therefore, held that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that the person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. It is further required to be established that besides a person being "dangerous person", his alleged activities fall within the ambit of the expression "public order". A distinction is to be drawn between law and order and maintenance of public order.

3. I have perused the material on record and have also read the statements of the witnesses. The

statements of witnesses are of general and stereotype. From the materials on record, it appears that the detenu has been wrongly branded as "dangerous person". There is also nothing on record to suggest that the activities of the petitioner may prejudicially affect the maintenance of public order. Thus, in my view, the detention of the detenu is ex-facie illegal and is not sustainable.

4. In view of the aforesaid, this Special Civil Application is allowed. The order of detention dated 17.7.1997 is quashed and set aside. The detenu shall be released forthwith if not required in any other case. Rule made absolute accordingly.

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m.s.p.